

MEMORANDUM

TO: All Parties to Town of Framingham, D.T.E. 02-46

FROM: Jesse S. Reyes, Hearing Officer

DATE: May 21, 2003

RE: Evidentiary Hearing Procedure

This Memorandum, summarizing the Department's evidentiary hearing procedure, is in response to an inquiry by counsel for the Town of Ashland regarding the scope of testimony and evidence that may be presented on direct, elicited on cross-examination, or presented in rebuttal at a hearing before the Department of Telecommunications and Energy.

At the hearing, parties generally do not present opening or closing arguments. That is reserved for briefs. At the beginning of the hearing, the documents that you have included in your proposed exhibit lists are "marked" for identification on the record. You are to bring one pre-marked original of the exhibits and six bench copies, as I have previously instructed. See also Ground Rules at G, I. At the close of the hearing, the proposed exhibits and any marked rebuttal exhibits are moved into evidence upon motion by the parties or the bench.

The Town of Framingham presents its case first because it is the complainant. 220 C.M.R. § 1.06(f). Traditionally, the scope of a party's direct case is limited to the testimony presented in its pre-filed or prepared testimony. The witnesses are expected to adopt their pre-filed testimony, which are offered as exhibits. 220 C.M.R. § 1.10(4). Oral direct testimony is normally omitted once the pre-filed testimony is adopted. The witnesses may provide additional testimony to make corrections to the pre-filed testimony or provide updates to data previously presented, with specific page references to the documents being updated or corrected. Further, such updates are limited to the documents listed on your proposed exhibit lists (which may be supplemented until seven days prior to the hearing). See 220 C.M.R. § 1.10(5)(a). The witnesses are then made available for cross-examination. 220 C.M.R. § 1.06(f).

On cross-examination, Ashland may question any of Framingham's witnesses using any document so long as the subject matter is within the scope of that witness's testimony. Copies of such documents must be provided to all parties when they are introduced. 220 C.M.R. § 1.10(5)(b). If, on cross-examination, a witness provides a response not previously disclosed in pre-filed testimony, this may "open the door" for Ashland to present testimony on the new matters in rebuttal. After Ashland has completed cross-examination of the witnesses, the Department may question the witnesses. Framingham may question the witness on re-direct to clarify any points raised in cross-examination.

Ashland then presents its direct case. Unless Framingham's witnesses have opened the door to new matters, Ashland's witnesses are limited to the facts presented in their pre-filed testimony, which the witnesses are expected to adopt and correct, as described above. Ashland's witnesses are then made available for Framingham to cross-examine as described above. Ashland may then redirect its witnesses.

Because Framingham is the complainant, Framingham may close by presenting testimony to rebut new matters that have been opened, if any. 220 C.M.R. § 1.06(f). Ashland may cross-examine Framingham's rebuttal witnesses. Framingham may re-direct the rebuttal witnesses, if necessary.

If, prior to the hearing, any party seeks to expand the scope of its direct case, that party must file a motion for leave to amend its pre-filed testimony. Otherwise, testimony presented by the parties is limited only to the pre-filed testimony and to any new relevant matters opened in cross-examination. Such a motion must include the proposed new testimony and a statement of reasons why such testimony could not have been filed at the time that pre-filed testimony was due, and must be filed prior to the close of discovery. Any such motion that fails to justify why the additional testimony could not have been submitted within the procedural schedule will not be granted.